

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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San Francisco, CA 94102
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August 27, 2001

Thomas T. Watson
McCormick, Kabot, Jenner & Watson
1220 West Main Street
Visalia, CA 93291Re: Public Works Case No. 2000-064
City of Porterville Road Repair Project/Tulare County Road
Annexation

Dear Mr. Watson:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the street improvements undertaken as part of the City of Porterville's ("City") street construction and repair project ("the Project") on former County of Tulare ("County") streets is a public work. Project is not subject to the payment of prevailing wages, however, because City is a charter city under the California Constitution.

Under an agreement dated January 30, 2001, City and County agreed that City would acquire certain County streets adjacent to City streets, and City would undertake construction, repair and maintenance of those streets under Streets and Highways Code section 1810. County recorded a quitclaim deed to these streets on March 27, 2001. City is presently soliciting bids for the Project, which will be funded with City-issued Certificates of Participation.

Streets and Highways Code section 1810 states:

A city may acquire, by purchase or eminent domain, property outside its boundaries in the unincorporated area of the county in which the city is located, if it is necessary to connect or widen the existing streets of the acquiring city and if the county consents to the acquisition.

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Letter to Thomas T. Watson
Re: Public Works Case No. 2000-064
August 27, 2001
Page 2

The portion of the acquired property used to connect or widen a city street shall be deemed a city street for all purposes. (Emphasis added.)

Labor Code Section 1720(a) states, in relevant part, that "public works" means: "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds... ."

In this case, the Project is construction done under contract. It was paid for with public funds because the City-issued Certificates of Participation are public funds. Therefore, the Project is a public work. In this case, however, it is necessary to determine whether the Project is exempt from the requirement to pay prevailing wages by virtue of City's charter city status.

Under Article XI, section 5 of the California Constitution, a city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." City was incorporated as a charter city in 1926. Section 4 of its charter states that City: "shall have and may exercise all powers necessary or appropriate to a municipal corporation and the general welfare of its inhabitants, which are not prohibited by the constitution... ." Section 54 of the charter states that the City: "may adopt and enforce ordinances which in relation to municipal affairs, shall control as against general laws of the state." City has, by operation of its charter, availed itself of the power to exercise all powers with respect to municipal affairs and the general welfare of the inhabitants of City.

Insofar as a charter city legislates with regard to municipal affairs, its charter prevails over general state law. The prevailing wage law, a general law, does not apply to the public works projects of a charter city so long as the projects in question are within the realm of municipal affairs.¹ In general, the term is defined as a matter that affects the local citizens rather than the people of the state generally, whereas a matter of statewide concern extends beyond the local interests at stake.²

¹City of Pasadena v. Charleville (1934) 215 Cal. 384, 10 P.2d 745; Vial v. City of San Diego (1981) 122 Cal.App.3d 346, 175 Cal.Rptr. 647.

²66 Ops.Cal.Atty.Gen. 266, 271-72.

Letter to Thomas T. Watson
Re: Public Works Case No. 2000-064
August 27, 2001
Page 3

In *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115, 39 P.2d 412, the California Supreme Court set forth the following factors for determining whether a project was exclusively a municipal affair subject to the charter city exemption: (1) the extent of non-municipal control over the project; (2) the source and control of the funds used for the project; and (3) the nature and geographic scope of the project. Application of these factors to the present case is appropriate.

The Extent of Non-Municipal Control Over the Project

City will contract for and oversee the Project. City has undertaken ownership of the land on which the streets sit. County will have no involvement in the construction or maintenance of the streets. Construction or repair of city streets is a traditional city function. *City of San Jose v. Lynch* (1936) 4 Cal.2d 760, 764, 52 P.2d 919.

The Source and Control of Funds Used for the Project

City is paying for the Project through its issuance of Certificates of Participation. No county, state or federal funds will be used to pay for the construction. In this respect, Project is a municipal concern.

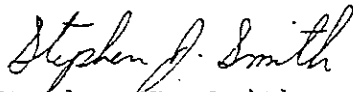
The Nature and Geographic Scope of the Project

Here, City is acquiring ownership of certain County streets and intends to maintain them as City streets. They are within the boundaries of City. County has surrendered all authority and control over the streets in question to City and, as stated in the quitclaim deed filed by County, "hereby remises, releases, and forever quitclaims to the City of Porterville" the property in question. The Project will therefore take place entirely within City's boundaries.

For these reasons, the above Project is a municipal affair and not subject to the requirement to pay prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,


Stephen J. Smith
Director

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